

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1351**

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**Introduced by Senator Wright**

February 19, 2010

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An act to ~~amend Section 11349 of~~ *add Sections 11346.6 and 11346.65* to the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1351, as amended, Wright. ~~Office of Administrative Law: regulation review.~~ *State agencies: regulation adoption requirements.*

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies. ~~Existing law requires the Office of Administrative Law to review specified regulations and make determinations using prescribed standards, including clarity, as defined and for the review of those regulatory actions by the Office of Administrative Law.~~

~~This bill would revise the definition of "clarity" to additionally mean that regulations include all implementation schedules and forms necessary for compliance with the regulation.~~

*This bill would require an agency that adopts a regulation that requires the use of a new or emerging technology or equipment in order to achieve the identified purpose of the regulation to post, as specified, upon the effective date of the regulation, that the required technology or equipment is commercially available or will be commercially available prior to the effective date of the regulation. This bill would, if the required technology or equipment is not commercially available on the effective date of a regulation, prohibit an agency from enforcing a violation of the regulation until at least 6 months after the technology*

*or equipment becomes commercially available and the agency posts that information, as specified.*

*This bill would require an agency to make any implementation schedule, procedure, or form that is necessary for compliance with a proposed regulation available to the public upon the agency's final adoption of that regulation. The bill would, if the implementation schedule, procedure, or form necessary for compliance with the regulation is not available on the effective date of the regulation, prohibit an agency from enforcing a violation of the regulation for at least 6 months after the implementation schedule, procedure, or form becomes available and the agency posts that information, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*  
2 *following:*
- 3     (a) *This state has some of the most extensive and detailed*  
4 *regulatory requirements in the nation which can also lead to*  
5 *significant financial penalties for noncompliance.*
- 6     (b) *It is in the best interests of the public good and the regulated*  
7 *business community that regulations are fully complied with. In*  
8 *order to ensure full compliance, regulations should clearly set*  
9 *forth adequate notice of clear enforcement timelines, provide all*  
10 *necessary forms and other necessary compliance tools well in*  
11 *advance for proper planning and implementation, and ensure that*  
12 *any technologies required for compliance are in fact commercially*  
13 *available in adequate supply.*
- 14     (c) *There are numerous examples of regulations affecting the*  
15 *state's economy and the public health that did not provide adequate*  
16 *notice and compliance tools, which put the regulated business*  
17 *communities at risk of noncompliance and thereby reduced its*  
18 *ability to properly implement state law.*
- 19     (d) *It is, therefore, the intent of the Legislature that the*  
20 *regulatory bodies of this state, to the maximum extent possible and*  
21 *with reasonable advance notice before a regulation goes into*  
22 *effect, identify all mandatory deadlines, provide all necessary*  
23 *compliance tools, and ensure that required compliance*  
24 *technologies are commercially available.*

1 SEC. 2. Section 11346.6 is added to the Government Code, to  
2 read:

3 11346.6. (a) An agency that adopts a regulation that requires  
4 the use of a new or emerging technology or other equipment in  
5 order to achieve the identified purpose of the regulation shall post  
6 on its Internet Web site, if available, and in the California  
7 Regulatory Notice Register, upon the effective date of the  
8 regulation, that the required technology is commercially available  
9 or will be commercially available prior to the effective date of the  
10 regulation.

11 (b) Notwithstanding any other law, if a new or emerging  
12 technology or other equipment, whose use is required by a  
13 regulation, is not commercially available on the effective date of  
14 the regulation, the adopting agency shall not enforce a violation  
15 of that regulation until at least six months after the required  
16 technology or other equipment becomes commercially available  
17 and the agency posts on its Internet Web site, if available, and in  
18 the California Regulatory Notice Register, that the required  
19 technology or other equipment has become commercially available.

20 (c) Nothing in this section shall be construed to require an  
21 agency to readopt a regulation already approved by the office and  
22 filed with the Secretary of State.

23 SEC. 3. Section 11346.65 is added to the Government Code,  
24 to read:

25 11346.65. (a) An agency shall make any implementation  
26 schedule, procedure, or form that is necessary for compliance with  
27 a proposed regulation available to the public upon the agency's  
28 final adoption of that regulation.

29 (b) Notwithstanding any other law, if an implementation  
30 schedule, procedure, or form that is necessary for compliance with  
31 the regulation is not available to the agency as of the effective date  
32 of the regulation, the adopting agency shall not enforce a violation  
33 of that regulation until at least six months after the implementation  
34 schedule, procedure, or form becomes available and the agency  
35 posts on its Internet Web site, if available, and in the California  
36 Regulatory Notice Register, that the required implementation  
37 schedule, procedure, or form has become available.

38 (c) Nothing in this section shall be construed to require an  
39 agency to readopt a regulation already approved by the office and  
40 filed with the Secretary of State.

1 SECTION 1. It is the intent of the Legislature in enacting this  
2 act to clarify existing law to conform with the existing regulatory  
3 review practices.

4 SEC. 2. ~~Section 11349 of the Government Code is amended~~  
5 ~~to read:~~

6 ~~11349. The following definitions govern the interpretation of~~  
7 ~~this chapter:~~

8 (a) ~~“Necessity” means the record of the rulemaking proceeding~~  
9 ~~demonstrates by substantial evidence the need for a regulation to~~  
10 ~~effectuate the purpose of the statute, court decision, or other~~  
11 ~~provision of law that the regulation implements, interprets, or~~  
12 ~~makes specific, taking into account the totality of the record. For~~  
13 ~~purposes of this standard, evidence includes, but is not limited to,~~  
14 ~~facts, studies, and expert opinion.~~

15 (b) ~~“Authority” means the provision of law which permits or~~  
16 ~~obligates the agency to adopt, amend, or repeal a regulation.~~

17 (c) ~~“Clarity” means written or displayed so that the meaning of~~  
18 ~~regulations will be easily understood by those persons directly~~  
19 ~~affected by them and that the regulations include all~~  
20 ~~implementation schedules and forms necessary for compliance.~~

21 (d) ~~“Consistency” means being in harmony with, and not in~~  
22 ~~conflict with or contradictory to, existing statutes, court decisions,~~  
23 ~~or other provisions of law.~~

24 (e) ~~“Reference” means the statute, court decision, or other~~  
25 ~~provision of law which the agency implements, interprets, or makes~~  
26 ~~specific by adopting, amending, or repealing a regulation.~~

27 (f) ~~“Nonduplication” means that a regulation does not serve the~~  
28 ~~same purpose as a state or federal statute or another regulation.~~  
29 ~~This standard requires that an agency proposing to amend or adopt~~  
30 ~~a regulation must identify any state or federal statute or regulation~~  
31 ~~which is overlapped or duplicated by the proposed regulation and~~  
32 ~~justify any overlap or duplication. This standard is not intended~~  
33 ~~to prohibit state agencies from printing relevant portions of~~  
34 ~~enabling legislation in regulations when the duplication is necessary~~  
35 ~~to satisfy the clarity standard in paragraph (3) of subdivision (a)~~  
36 ~~of Section 11349.1. This standard is intended to prevent the~~  
37 ~~indiscriminate incorporation of statutory language in a regulation.~~